

Document Filed Electronically

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ASPEX EYEWEAR, INC. and	:	
CONTOUR OPTIK, INC.,	:	Civil Action No. 07-cv-2373 (DC) (THK)
	:	
Plaintiffs,	:	District Judge Denny Chin
v.	:	Magistrate Judge Theodore H. Katz
	:	
CLARITI EYEWEAR, INC.,	:	
	:	
Defendant.	:	
CLARITI EYEWEAR, INC.,	:	
	:	
Counterclaim Plaintiff,	:	
v.	:	
	:	
ASPEX EYEWEAR, INC. and	:	
CONTOUR OPTIK, INC.,	:	
	:	
Counterclaim Defendants.	:	

**DECLARATION OF RUSSELL W. FAEGENBURG IN
OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

I, RUSSELL W. FAEGENBURG, declare and state as follows:

1. I am a partner with the law firm of Lerner, David, Littenberg, Krumholz & Mentlik, LLP, counsel to plaintiffs Aspex Eyewear, Inc. and Contour Optik, Inc. in this matter.

2. Attached hereto as Exhibit A is a true and correct copy of U.S. Patent No. RE 37,545E ("the '545 Patent").

3. Attached hereto as Exhibit B is a true and correct copy of U.S. Patent No. 6,109,747 ("the '747 Patent").

4. Attached hereto as Exhibit C is a true and correct copy of the Final Judgment on Consent by Clariti ordered on October 6, 1999, for the Southern District of New York action styled *Aspex Eyewear, Inc. v. Everyjoy et. al* (99-cv-2092).

5. Attached hereto as Exhibit D is a true and correct copy of Defendant Clariti's Responses to Plaintiffs' First Set of Requests for Admissions, dated January 7, 2008.

6. Attached hereto as Exhibit E is a true and correct copy of Defendant Clariti's Responses to Plaintiffs' Second Set of Requests for Admissions, dated April 14, 2008.

7. Attached hereto as Exhibit F is a true and correct copy of Clariti's sales information from 2003 to 2007 bearing document numbers CLA001245-72.

8. Attached hereto as Exhibit G is a true and correct copy of a letter from A. Skale to M. Wagner, dated September 21, 2006.

9. Attached hereto as Exhibit H is a true and correct copy of a letter from M. Wagner to A. Skale, dated October 20, 2006.

10. Attached hereto as Exhibit I is a true and correct copy of Clariti's request for oral argument, dated January 7, 2008 containing the December 26, 2007 Patent Owner's Statement in the '747 reexamination.

11. Attached hereto as Exhibit J is a true and correct copy of an e-mail from S. Procaccini to A. Skale, dated March 5, 2008.

12. Attached hereto as Exhibit K is a true and correct copy of the Order Construing Claims of U.S. Patents RE 37,545 and 6,109,747, dated February 14, 2003, for the Central District of California action styled *Aspex Eyewear, Inc. v. Miracle Optics, Inc.* (01-cv-10396).

13. Attached hereto as Exhibit L is a true and correct copy of the Order Denying Defendant's Motion for Partial Summary Judgment of Invalidity of Claim 12 of the '747 Patent, dated October 30, 2003, for the Central District of California action styled *Aspex Eyewear, Inc. v. Miracle Optics, Inc.* (01-cv-10396).

14. Attached hereto as Exhibit M is a true and correct copy of the Re-declaration of Interference (Interference No. 104,051) by the United States Patent and Trademark Office, dated October 8, 1998.

15. Attached hereto as Exhibit N is a true and correct copy of the Decision on Iwamoto's Revised Preliminary Motion² issued by the Board of Patent Appeals and Interferences, dated April 23, 1999.

16. Attached hereto as Exhibit O is a true and correct copy of excerpts from the February 25, 2008 deposition of Dominique Yonemoto.

17. Attached hereto as Exhibit P is a true and correct copy of the document bearing document number CLA001440 for an e-mail from Y. H. Kim to A. Skale, dated November 06, 2006.

18. Attached hereto as Exhibit Q is a true and correct copy of the document bearing document number CLA001141 entitled "Clariti Eyewear, Inc. Moving Announcement."


19. Attached hereto as Exhibit R is a true and correct copy of document numbers CLA001245-72, which is Clariti's inventory information as of January 3, 2008.

20. Attached hereto as Exhibit S is a true and accurate copy of a declaration signed by David Chao pursuant to 37 CFR 1.131 in the '207 reissue prosecution, dated April 19, 2001.

21. Attached hereto as Exhibit T is a true and accurate copy of a declaration signed by David Chao in opposition to Miracle Optics, Inc's Motion for Summary Judgment of Invalidity of Claim 12 of the '747 Patent in the action styled *Aspex Eyewear, Inc. v. Miracle Optics, Inc.* (01-cv-10396), dated September 22, 2003.

I declare under penalty of perjury that the foregoing statements are true and correct.

Executed on: May 1, 2008



Russell W. Faegenburg